

- (2) Whether claimant provided timely notice of accident.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, for purposes of preliminary hearing the Appeals Board finds:

The preliminary hearing Order entered by the Administrative Law Judge should be affirmed.

(1) Claimant alleges he initially injured his back during the first week of May 1996 while installing drywall for the respondent. The Appeals Board adopts the conclusion of the Administrative Law Judge that it is more probably true than not true that claimant sustained personal injury by accident arising out of and in the course of his employment with respondent in May 1996. Although claimant is unable to identify a specific event that caused his symptoms or injury, those symptoms began while claimant was working on or about May 1, 1996. Claimant's job included repetitive bending, squatting, and lifting weights up to 45 or 50 pounds. Claimant testified that he was unaware of any off-the-job activities that would cause back injury. Although claimant was unsure of what caused his back soreness, claimant immediately reported it to his supervisor. Despite his initial symptoms, claimant continued to work through May 13, 1996, when he reported to respondent's safety manager that he needed to consult a doctor because of worsening symptomatology.

(2) Although based upon different reasons, the Appeals Board adopts the conclusions of the Administrative Law Judge that claimant provided respondent with timely notice of accident. For purposes of preliminary hearing, the record is sufficient to establish claimant's last day of work, or May 13, 1996, as the date of accident, for a cumulative, repetitive trauma-type injury. Therefore, the notice respondent received on May 14, 1996, was timely as it was within ten days of the accident. As of that date, respondent knew that claimant's back problems were believed to be caused by claimant's work.

(3) The respondent and its insurance carrier requested the Appeals Board to clarify the Administrative Law Judge's Order regarding payment of temporary total disability benefits. At this juncture of the proceeding, the Appeals Board is unable to address the issues raised regarding the appropriate dates claimant should receive temporary total disability benefits because it is without jurisdiction and authority. See K.S.A. 44-534a, as amended, and K.S.A. 44-551, as amended, which govern Appeals Board jurisdiction.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge Floyd V. Palmer dated July 17, 1996, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of September 1996.

BOARD MEMBER

c: Frank D. Taff, Topeka, KS
Clifford K. Stubbs, Lenexa, KS
Floyd V. Palmer, Administrative Law Judge
Philip S. Harness, Director